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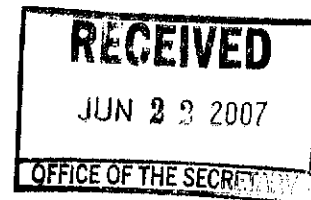
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OFFICE OF THE DIRECTOR  
INVESTMENT MANAGEMENT DIVISION

*By Electronic Delivery*

June 13, 2007



Robert Plaze  
Associate Director  
Division of Investment Management  
U. S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

4-542

*Re: Recommendations Regarding Amendments to Rule 19a-1*

Dear Mr. Plaze:

The Investment Company Institute<sup>1</sup> is submitting for your consideration recommendations to amend Rule 19a-1 under the Investment Company Act of 1940. As you know, Rule 19a-1, which governs how a fund calculates and discloses the sources of its distributions, has not been revised substantively since its adoption in 1941. Since that time, technological advances, such as the Internet, have altered dramatically the way funds provide, and shareholders access, information. The types and complexity of investments made by funds, the accounting and tax treatment of these investments, and fund distribution practices also have changed significantly. The Institute has worked extensively with its members to develop recommendations that would update Rule 19a-1 to reflect these developments. The revisions we recommend below will permit funds to communicate more effectively with their shareholders, and shareholders to more readily access and compare information on fund distributions.<sup>2</sup>

<sup>1</sup> The Investment Company Institute is the national association of the U.S. investment company industry. More information about the Institute is available at the end of this letter.

<sup>2</sup> In an attachment to this letter, we have provided text of amendments to Rule 19a-1 that would need to be made to effectuate our recommendations. We recognize that both Rule 19a-1 and Rule 19b-1 are intended to enhance shareholder understanding of the nature of fund distributions from sources other than net investment income. Our proposed amendments to Rule 19a-1 would not address all of the issues encountered by closed-end funds that offer, or seek to offer, managed distribution plans pursuant to Section 19(b) exemptive orders. The Commission staff recently issued a revised set of conditions for closed-end funds seeking these orders. See Letter from James M. Curtis, Branch Chief, Division of Investment Management, U.S. Securities and Exchange Commission to Dorothy M. Donohue, Senior Associate Counsel, Investment Company Institute, dated December 21, 2006. We urge the Commission to consider proposing amendments to Rule 19a-1 and Rule 19b-1 concurrently and to propose amendments to Rule 19b-1 that are more flexible than the conditions recently issued by the staff. See, e.g., Letter from Dorothy M. Donohue, Senior Associate Counsel, Investment Company Institute to Cate Marshall, Senior Counsel, Division of Investment Management, U.S. Securities and Exchange Commission, dated November 17, 2006.

## Background and Summary of Recommendations

Section 19(a) requires the payment of any dividend, or a distribution in the nature of a dividend payment, to be accompanied by a written statement, (a "Section 19(a) Notice") that adequately discloses the source(s) of a payment if it is made from any source other than accumulated undistributed net income. Rule 19a-1(a) requires the Section 19(a) Notice to be on a separate piece of paper, and to clearly indicate what portion of the payment is from: (1) net income; (2) net profits from the sale of securities or other properties; and/or (3) paid-in surplus or any other capital source. Section 19(a) and Rule 19a-1 are intended to protect fund shareholders from mistakenly believing returns of capital or distributions of capital gains are income of a recurring nature.<sup>3</sup> Commission staff recently reiterated the importance of this requirement, stating that it is a basic and fundamental requirement to accompany the payment of any distribution from a source other than net income with a written statement identifying the source of the payment.<sup>4</sup>

The objective of Section 19(a) can be achieved by requiring funds to disseminate information about distributions through the Internet within a reasonable amount of time after a distribution is made and in periodic shareholder communications. We therefore recommend that the Commission update Rule 19a-1 to permit funds to satisfy their disclosure obligations by posting the required information on their own, or an affiliate's, website within a reasonable amount of time after a distribution and additionally transmitting the required information to beneficial shareholders no less frequently than quarterly in account statements or other written communications.

We also recommend clarifying Rule 19a-1 to prescribe the accounting treatment for calculating the sources of fund distributions. A fund's distribution generally should be treated as arising first from net investment income (a book concept) and calculated under generally accepted accounting principles ("GAAP"). Amounts distributed in excess of net income should be treated as other taxable income and net realized gains (*i.e.*, capital gains) so long as they are supported by earnings and profits (calculated on a tax basis). The remainder of the distribution, if any, should be treated as a non-taxable return of capital as determined for federal income tax purposes.<sup>5</sup> Rule 19a-1(e) should be amended to clarify that any revision to amounts previously subject to Section 19(a) reporting be made cumulatively. Finally, we recommend providing an exception from Section 19(a) Notice reporting for *de minimis* amounts of capital gain or return of capital.

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<sup>3</sup> See, e.g., Hearings Before a Subcommittee of the Committee on Banking and Currency of the United States Senate on S.3580, 76th Cong. (3<sup>rd</sup> Session) 275, 278 (1940).

<sup>4</sup> See, e.g., Andrew J. Donohue, *Keynote Address at 2007 Mutual Funds and Investment Management Conference* (March 26, 2007).

<sup>5</sup> Reporting return of capital on a tax basis is consistent with AICPA Statement of Position No. 93-2, *Determination, Disclosure, and Financial Statement Presentation of Income, Capital Gain, and Return of Capital Distributions by Investment Companies*, as incorporated into and superseded by AICPA Audit and Accounting Guide for Investment Companies (May 1, 2006), paragraphs 12.31-12.38 ("ROC-SOP").